

# **EXHIBIT 15**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

IN RE APPLE IPHONE ANTITRUST  
LITIGATION

No. 4:11-cv-06714-YGR

**JOINT STATEMENT RE: CASE  
SCHEDULE**

COURTROOM: 1, 4th Floor  
JUDGE: Hon. Yvonne Gonzalez Rogers

Pursuant to the Court’s direction in the February 2, 2024 order on Plaintiffs’ Renewed Motion for Class Certification (ECF No. 789) (hereinafter, “Order”), Plaintiffs Robert Pepper, Stephen H. Schwartz, Edward W. Hayter, and Edward Lawrence (collectively, “Plaintiffs”) and Defendant Apple Inc. (collectively, the “Parties”), by and through their respective counsel, hereby submit this Joint Statement Re: Case Schedule.

### APPLE’S STATEMENT

As a preliminary matter, Apple notes that it will be filing a Rule 23(f) petition with the Ninth Circuit, seeking review of the Court’s Order. Pending the Ninth Circuit’s review and disposition of that petition (and any appeal, if granted), Apple requests a temporary stay of one part of discovery in this case—the production of highly-sensitive consumer records.

Plaintiffs have requested extremely sensitive personal identifying information belonging to hundreds of millions of Apple consumers—specifically, the names, physical addresses, contact information, and payment account information associated with more than 400 million App Store accounts. Plaintiffs seek this information in order to attempt to match the actual individual purchasers associated with consumer accounts on the App Store, as the Court directed them to do before any trial in this matter. *See* Renewed Class Cert. Hearing Tr. 94:21-25, 95:1-5, and 102:6-9. Plaintiffs propose to analyze that data and ultimately to connect it with the more than 100 billion App Store transactional records produced by Apple in this matter. The production of these two datasets raises profound security and privacy risks to the identities and purchase histories of all of the App Store’s customers in the United States over the past 16 years. *See* CMC Tr. 14:19-20 (Apr. 11, 2022) (Court recognition of “security issues” with Plaintiffs’ request). Indeed, Apple applies multiple layers of protections to defend this type of customer information in the ordinary course of its business. *See also id.* 13:1-8; *see also* Apple Privacy Policy (last updated Dec. 22, 2022), <https://www.apple.com/legal/privacy/en>.

To prepare for possible production of this data, the Parties have begun discussions on security measures to protect the data as much as possible from bad actors who have increasingly targeted cyberattacks against law firms and discovery vendors. And Apple is willing to continue to engage with Plaintiffs and their consultants on devising a plan for the production of purchaser data if and when necessary (without waiving any of Apple’s rights with respect to the process and scope of production).

1 Apple believes, however, that given the real and significant risks to consumer privacy, the production  
2 of purchaser data should be stayed until the Rule 23(f) process runs its course.

3 Courts evaluating a request for a stay of proceedings or discovery pending decisions relating  
4 to a Rule 23(f) petition consider (1) whether the petition and associated appeal present “serious legal  
5 questions”; (2) whether the petitioner will be irreparably injured in the absence of a stay; (3) whether  
6 issuance of a stay will not substantially injure the opposing party; and (4) where the public interest  
7 lies. *Gray v. Golden Gate Nat. Recreational Area*, No. 08-cv-00722-EDL, 2011 WL 6934433, at \*1-  
8 2 (N.D. Cal. Dec. 29, 2011) (citing *Leiva-Perez v. Holder*, 640 F.3d 962, 964-70 (9th Cir. 2011);  
9 *Johnson v. Geico Cas. Co.*, 269 F.R.D. 406, 412 (D. Del. 2010)).

10 Here, Apple’s Rule 23(f) petition raises “serious legal questions.” The Ninth Circuit granted  
11 Rule 23(f) review in a similar case against Google, *In re Google Play Store Antitrust Litigation*,  
12 No. 23-15285, raising the same core legal questions before that petition was mooted by the district  
13 court’s decision to decertify the plaintiff class in that case. Specifically, the petitions in both cases  
14 raise questions concerning (1) what rigorous analysis is required into whether individualized issues of  
15 each class member’s injury will overwhelm common questions, and (2) the sufficiency of an injury  
16 model with unsupported assumptions about individualized factors bearing on injury. Apple maintains  
17 that there are serious questions as to whether Plaintiffs’ model here can successfully ascertain the  
18 number of uninjured class members and limit them, as required under Rule 23(f). Apple will be  
19 irreparably injured if it is forced to put sensitive customer data at unnecessary risk of compromise by  
20 bad actors. On the other hand, given the speed of Rule 23(f) proceedings, any delay in production of  
21 purchaser data would be relatively brief and cause no substantial harm to Plaintiffs while other  
22 discovery continues to move forward. For example, Apple will produce the updated transactional data  
23 necessary for Plaintiffs’ expert to run his pricing model on all transactional data.<sup>1</sup> The public interest  
24 also favors a stay to avoid unnecessary risk to data on millions of consumers across the country.

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27 <sup>1</sup> To be clear, Apple’s position is that the pricing model of Plaintiffs’ expert cannot successfully  
28 ascertain the number of uninjured class members and limit them in a way that would support the  
continued certification of a plaintiff class in this action.

## PLAINTIFFS' STATEMENT

Plaintiffs oppose Apple's requested stay. Apple's purported reason for seeking a stay is that its Rule 23(f) petition from this Court's meticulous, detailed, cautious, and well-reasoned class certification decision raises the same "core legal questions" argued by Google in its *Google Play Store Antitrust Litigation*. Nothing could be farther from the truth. Leaving apart the Court's careful consideration of all the issues Apple chose to litigate – no matter how poorly founded – this case and the *Google* case are nothing alike. Indeed, the Court is well aware that in Google's criticism of the plaintiffs' expert in *that* case – in which the class was certified – Google itself went to great lengths to distinguish Prof. McFadden's thorough analysis here from the *entirely different* work done by the plaintiffs' expert there. In truth, Apple simply wants to delay the trial of this action, which already has withstood too many delays because of Apple's scorched-earth and wrong-footed litigation tactics. It is time for Apple to face trial for its misdeeds.

Plaintiffs need the consumer records to: (1) match Apple IDs to people in order to ascertain the number of uninjured Class members and limit them, as required by the Court; (2) demonstrate to the Court that Prof. McFadden's model can and will successfully ascertain the number and identity of all uninjured Class members before trial so that they may be appropriately limited if necessary; and (3) give notice to the Class as required by Federal Rule of Civil Procedure 23(c)(2). Without the consumer data, Plaintiffs will not be able to meet the jointly proposed schedule set forth below and the trial of this action will be needlessly delayed.

As the Court is well aware, Plaintiffs require the customer data to match the actual, individual purchasers to the consumer accounts on the App Store and to perform the damages calculations that must be completed before the trial of this matter. *See* Renewed Class Cert. Hearing Tr. 94:21-25, 95:1-5, and 102:6-9 (June 23, 2023). Plaintiffs have proposed that the data be produced to their designated claim administration service provider. Plaintiffs propose to have the claims administration service provider work with their damages expert, Prof. McFadden, to analyze that data and ultimately to connect it with the more than 100 billion App Store transactional records produced by Apple in this matter so that the required computations can be performed. The data will also be used by the service

1 provider to provide notice of the pendency of the class action to the Class members. Plaintiffs do not  
2 expect to need or have access to any of the customer data.

3 Plaintiffs have proposed that Apple communicate directly with the service provider regarding  
4 its data safety and security protocols. Apple only recently indicated its willingness to accept Plaintiffs’  
5 proposal. To balance Apple’s stated concern for the safety and security of the personal information of  
6 its customers with Plaintiffs’ legitimate need for the data to prepare to proceed to trial (as well as to  
7 send notice of pendency to the Class members), it is incumbent upon Apple to take reasonable steps  
8 to work with Plaintiffs’ claims administration service provider to ensure the safety and security of the  
9 information.

10 Issuance of a stay will substantially prejudice Plaintiffs. Plaintiffs will not be able to give notice  
11 to the Class, match Apple IDs to people, identify and limit the number of uninjured Class members, or  
12 complete their merits expert reports. Furthermore, this case has been pending since 2011, and delay  
13 only causes more harm to Plaintiffs’ ability to try this case. Apple’s forthcoming Rule 23(f) petition  
14 does not justify this kind of prejudice to Plaintiffs. As the Supreme Court has emphasized, “Rule 23(f)  
15 avoids delay . . . by specifying that ‘[a]n appeal **does not stay** proceedings in the district court unless  
16 the district judge or the court of appeals so orders.’” *Microsoft Corp. v. Baker*, 137 S. Ct. 1702, 1713  
17 n.9 (2017) (quoting Fed. R. Civ. P. 23(f)) (emphasis added).<sup>2</sup>

18 Moreover, Apple has not demonstrated that its anticipated 23(f) petition will present “serious  
19 legal questions.” Apple references the Ninth Circuit’s granting of a 23(f) petition in the *In re Google*  
20 case but, as demonstrated above, the issues here are not the same or even similar. It then references  
21 “serious questions” about whether Plaintiffs’ model can ascertain the number of uninjured class  
22 members and limit them but does identify the “serious legal questions.” This is not sufficient for Apple  
23 to meet its burden.

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26 <sup>2</sup> See also *In re Sumitomo Copper Litig.*, 262 F.3d 134, 140 (2d Cir. 2001) (“Finally, we note that  
27 parties should not view Rule 23(f) as a vehicle to delay proceedings in the district court.”); *Blair v.*  
28 *Equifax Check Serv., Inc.*, 181 F.3d 832, 835 (7th Cir. 1999) (“ . . . Rule 23(f) is drafted to avoid delay  
. . . . Because stays will be infrequent, interlocutory appeals under Rule 23(f) should not unduly retard  
the pace of litigation.”).

Nor has Apple demonstrated that it will be irreparably injured in the absence of a stay. The Ninth Circuit has held irreparable harm is a “bedrock requirement” of a motion to stay, and movants must make a “threshold showing regarding irreparable harm” or “a stay *may not issue*, regardless of the petitioner’s proof regarding the other stay factors.” *Leiva-Perez*, 640 F.3d at 965 (emphasis added). Apple’s vague references to the sensitivity of the consumer data and risk are not sufficiently concrete to demonstrate injury.

Finally, it is in the public interest to move this case toward trial as expeditiously as possible, while still allowing for the time Plaintiffs’ experts need to process the massive transactional and consumer data and run their impact and damages model. Therefore, the Court should deny Apple’s request for even a partial stay.

### JOINTLY PROPOSED PRETRIAL SCHEDULE

With the exception of Apple’s proposal for a stay of discovery of highly sensitive consumer records, the Parties have agreed to entry of the following case schedule:

Event	The Parties’ Proposed Schedule
Deadline to Complete Fact Discovery	100 days after class certification decision (5/13/2024)
Last Discovery Motions Filed	30 days before closure of fact discovery (4/12/2024)
Parties’ Opening Expert Reports and Plaintiffs’ Expert’s Pricing Model Run on All App Store Transactional Data	150 days after close of fact discovery (10/10/2024)
Rebuttal Expert Reports	120 days after submission of initial expert reports (2/7/2025)
Expert Discovery Cutoff	45 days after submission of rebuttal expert reports (3/24/2025)
Dispositive <sup>3</sup> / <i>Daubert</i> Motions/Motion to Decertify	45 days after close of expert discovery (5/8/2025)
Dispositive/ <i>Daubert</i> Oppositions/Opposition to Motion to Decertify	45 days after opening brief is filed (6/23/2025)
Dispositive/ <i>Daubert</i> Replies/Reply in support of Motion to Decertify	30 days after opposition brief is filed (7/23/2025)

<sup>3</sup> See Standing Order regarding Pre-filing Conference Requirements for motions for summary judgment.

Event	The Parties' Proposed Schedule
Hearing on Dispositive/ <i>Daubert</i> Motions/Motion to Decertify	First Tuesday 30 days after replies on Dispositive/ <i>Daubert</i> Motions/Motion to Decertify (8/26/2025)
Motions <i>in Limine</i> exchanged	60 days after decision on Dispositive/ <i>Daubert</i> /Decertification Motions

If the Court issues a decision on dispositive/*Daubert*/decertification motions 60 days after the hearing proposed for the same (i.e., on October 27, 2025), under the Parties' proposed schedule, motions *in limine* would be due December 26, 2025. The immediately following six-month period would run from then until June 26, 2026. The Parties currently do not have conflicts that would affect their ability to appear for trial during that period.

DATED: February 16, 2024

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JOINT STATEMENT RE: CASE SCHEDULE

Case No. 11-cv-06714-YGR



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ECF SIGNATURE ATTESTATION

In accordance with Civil Local Rule 5-1(h)(3), the filer of this document hereby attests that the concurrence of the filing of this document has been obtained from the other signatory hereto.

DATED: February 16, 2024

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